

LAWRENCE BOARD OF ZONING APPEALS

Meeting Minutes

June 1, 2006 – 7:00 P.M.

Members present: Goans, Hannon, Lane, Carpenter, von Tersch and Emerson

Staff present: Patterson and Miller

ITEM NO. 1: COMMUNICATIONS

- Item 3 – Letter of opposition from Deborah Mills, President of the Oread neighborhood Association.
- Goans said he had spoken briefly with the applicant about the 90-day extension requested in tonight's miscellaneous items.
- von Tersch said she had received an email about Item 3 from Oread Neighborhood Association board members.
- There were no deferral requests or abstentions.

ITEM NO. 2: MINUTES

Several typographical errors were noted.

Motioned by Hannon, seconded by Lane to approve the May 4, 2006 meeting minutes as revised.

Motion carried 5-0-1, with Carpenter abstaining due to his absence from the May meeting.

ITEM NO. 3: 1140 MISSISSIPPI STREET [PGP]

B-04-12-06: A request for variances as provided in Section 20-1709.1 of the Zoning Ordinance of the Code of the City of Lawrence, Kansas, 2003. The first request is to reduce the minimum lot area required for RD zoned property from 6,000 square feet per Section 20-608 of the City Code, to a minimum of 5,000 square feet. The second request is to reduce the minimum side yard setback and rear yard setback from 5 feet and 20 feet, respectively, per Section 20-608 of the City Code, to 3.7 feet and 12.3 feet. The final request is to reduce the amount of off-street parking spaces required for a boarding house residential use of an existing structure containing a total of 7 bedrooms. Sections 20-610.5 and 20-1212 of the City Code define the number of required off-street parking spaces, based upon the ratio of one and one-half parking spaces per two lawful occupants in the structure. Based upon this requirement, the applicant is required to provide a minimum of 6 off-street parking spaces. They are seeking a variance to provide no off-street parking spaces on the property. The request is for property at 1140 Mississippi Street. Said property is legally described as the North half of the West 100' of Lot 7, Block 9, Oread Addition in the City of Lawrence. Submitted by Paul Werner Architects for James A. Slough, the property owner of record. Deferred from the May 4th meeting at the request of the applicant.

STAFF PRESENTATION

Mr. Patterson introduced the item, a request for multiple variances to allow use of an existing building as a 7 bedroom board house. He noted that the building was originally constructed as a single-family home, but had historically been used as a multi-family residence (8 bedroom apartment building). The requested variances included:

1. Reduction of the minimum allowable lot area from 6,000 to 5,000 square feet to recognize existing conditions.

2. Reduction of the minimum side yard setback from 5 feet to 3.7 feet and the minimum rear yard setback from 20 feet to 12.3 feet to recognize existing conditions.
3. Allow the provision of no off-street parking spaces instead of the required 6 spaces.

Mr. Patterson outlined Staff's analysis of the requests in relation to five criteria, specifically noting several points:

- The subject property was platted in 1863 and the existing building was constructed in 1912, both before adoption of the Zoning Code.
- The current RD zoning was one of the highest density residential zones in the City.
- Two new duplex units have recently been developed to the north of the subject property.
- The building has been used as a multi-family use with no parking for several years.
- Given the topography of the lot and the placement of the existing building, it may not be possible to provide any off-street parking for the property, regardless of use.
- The applicant's proposal will reduce the number of residents from its current use, bringing the property closer to compliance than its current state.
- A building permit has been granted for the proposal as shown.
- The HRC has approved the rehabilitation proposal as shown.

It was verified that the applicant owned the two lots directly to the north of the subject property, 1136 and 1138 Mississippi.

Staff noted the receipt of a letter of opposition from the Oread Neighborhood Association.

APPLICANT PRESENTATION

Paul Werner, Paul Werner Architects, spoke on behalf of the applicant. He said that the applicant had followed correct procedures and the need for a variance was not discovered until the final inspection. It was at this time that the City inspector took note of the fact that the structure had seven bedrooms and suggested that the owner had incorrectly filled out the building permit application. Mr. Werner said the applicant had 'checked single-family' on the application because this was how the building was listed when he took possession of the property, even though it was at that time being used as an 8-bedroom apartment building.

Mr. Werner said that all the variances requested today were to acknowledge existing conditions, and the existing parking situation would be improved by the applicant's proposal. He verified that there would be no change to the footprint of the building and there was no intent to change the property's zoning.

Mr. Werner said denial of the parking variance would present a hardship because there was no way to provide parking on the site without demolishing the existing structure. He added that approval of the proposal would provide a better, safer building for the benefit of the neighborhood.

There was extended discussion with Mr. Werner about the previous use of the building as "an 8-bedroom single-family home". It was discussed that a single-family home may have an unlimited number of bedrooms, but ceases to be a single-family home when more than 4 unrelated persons take residence (according to the City's adopted definition of "family").

It was established that the previous use had contained 8 bedrooms, but these units shared bathroom and kitchen facilities.

The Board expressed significant concern that the applicant had claimed on the building permit application that the structure would be a single-family residence, "when he knew full well that was not the intended use."

The Board tied this concept to the parking variance issue, saying they needed to ascertain how many parking spaces should be provided based on the proposed use: either single-family (stated on the building permit) or a congregate residence (stated by the applicant). Hannon suggested that the point was moot; no matter how many spaces were required by Code according to use, no spaces could be provided. It was countered that the Board would be considering a lesser variance if the parking requirement were based on a single-family use (2 down to 0 spaces instead of 6 down to 0 spaces).

It was verified with Staff that a variance would still be needed, even if the building were utilized strictly as a single-family home.

It was noted that the Board had granted a parking variance for 1136 Mississippi and that the applicant had withdrawn a variance application for 1138 Mississippi.

PUBLIC COMMENT

Candice Davis spoke on behalf of the Oread Neighborhood Association (ONA). She said the issue seemed to be unnecessarily confused and suggested that Mr. Werner had "been around long enough to know what was going on."

Ms. Davis said the ONA did not support the parking variance. They feel that too many developers are allowed to maximize their own profits to the detriment of the neighborhood by obtaining variances that should be granted only in rare and special circumstances.

The ONA feels that campus parking is not a viable option. Local builders and developers are very aware of the parking situation in this neighborhood and should think about how to address these problems before buying their land and making plans for development.

Ms. Davis referenced the other two properties in this block under the same ownership, saying the development of all three lots would result in a minimum of 18 tenants with no increase in off-street parking. She also spoke about the ONA's suggestion when the parking variance for 1136 Mississippi was considered that the applicant consider using that lot to provide parking for 1138 and 1140 (all under the same ownership).

Ms. Davis closed by saying the ONA would like to see the parking variance denied, sending a clear message to the development community that they must be more responsible. The neighborhood wanted to put an end to developers coming forward for a variance when construction was begun or even complete, with a claim that "there's nothing we can do."

James Slough, applicant, asked to address issues raised by the ONA. He said he did not feel it was appropriate to bring his other properties into this discussion, since 1136 Mississippi was a code compliant, and 1138 Mississippi was not and had not been brought before the Board.

Mr. Slough was asked to state his intent for 1138 Mississippi. He said he did not find this inquiry relevant to the issue at hand, but he proposed to continue the historic use of that property. He added that tonight's proceedings made him hesitant to invest in improvements to other properties as he proposed to do with this one.

Mr. Slough said Mr. Werner had not been involved in the project when he (Slough) took possession of the land or filled out the building permit applications. He said he was unaware at that time of the regulations about unrelated persons and the number of bedrooms.

Mr. Slough said it was confusing that there should be so much opposition to the proposal, when it had Staff support and would continue the existing type of use with an improved building and fewer residents.

BOARD DISCUSSION

The Board referenced a copy of the letter sent from the Assistant Planning Director to Mr. Slough in 2004 that explained the adopted policy about the definition of "family" and how it related to uses in the RD district. Staff was asked about the City's policy of "grandfathering" in existing uses that did not comply with this policy. It was suggested that an additional variance was needed to allow the proposed use.

It was discussed that a site plan would go before the City Commission that, if approved, would allow the proposed use. The Board suggested they should wait to see if this approval was granted before they considered how many parking spaces should be required/provided. Mr. Patterson explained that the site plan should not go forward to the City Commission until the parking variance was acted on by the Board of Zoning Appeals.

There was discussion about the Board's ability to bring the applicant's other properties into consideration with this request. Reference was made to the Code section allowing a property owner to provide off-site parking if they owned property within 300 feet of the subject property. Some members felt that the applicant had been remiss in building a structure on the once-vacant lot at 1136 Mississippi, when he could have used this opportunity to provide required parking for his own adjoining properties.

Mr. Slough commented that he had not known when he developed 1136 Mississippi that he would be required to provide parking that did not currently exist in order to continue the use at 1140 Mississippi.

Hannon stated again that the question of how many spaces were required according to use was moot for the Board's review, since no parking could be provided. The question of use would be part of the City Commission's site plan review.

Emerson asked how Staff supported the claim that the request did not adversely effect the rights of adjacent property owners. Mr. Patterson replied that the parking situation was not changed (from its current state) by the proposal and was, in fact, possibly improved since there would be one less bedroom.

Mr. Patterson responded to questioning that the Board is typically asked to restrict their review to the property specifically included in the request. This consideration would expand only in cases where multiple adjacent properties under the same ownership would share some feature (a laundry facility or a common parking lot for example). In that case, the applicant would be required to site plan the adjacent properties as a single development.

There was discussion about statements made by the applicant in previous reviews (for the 1136 Mississippi property) that there had been plans for a shared laundry facility. Mr. Slough said that had

been very early in the planning process and that the 1136 Mississippi property had been developed quite differently than that early proposal. It was stated that the current situation was that the three lots held three separate and distinct uses – a multi-family use, a duplex and the proposed boarding house.

It was verified that the new Code, when adopted, would not change any regulation relevant to this case.

Goans expressed significant frustration on behalf of the Board. He said they had been looking at this area for several months and he personally had difficulty believing that 1138 Mississippi would not be coming forward in the future. He added his dissatisfaction that the applicant could have used his property to provide a creative solution to existing problems but had chosen not to. However, it was noted that "the play had been made" for 1136 Mississippi and it was unclear how or if the Board could legally take that property into consideration with this request.

Carpenter said the Board "can and must" consider the three lots as a single property, citing the Code regarding off-site parking within 300 feet. Hannon said he did not agree, that "we had our chance with 1136 Mississippi," and "1140 Mississippi has to stand alone".

Hannon stated that he was prepared to approve all the variances in accordance with Staff's recommendation. It was suggested that, in doing so, the Board would "create a road map on how to circumvent the zoning ordinance."

Mr. Werner said the applicant was frustrated as well; two attempts had been made to provide parking for 1136 Mississippi and both were denied. That property (1136 Mississippi) was now developed and compliant with Code according to approvals already given. Furthermore, approval had been given for the 1140 Mississippi project by the HRC and Neighborhood Resources (building permit), and the applicant was going through all the proper channels to get site plan approval.

It was discussed that the property could be used as a traditional single-family home if the variance were denied. There would still be an unmet parking requirement, but the need for a variance would not be triggered because that use would not require a revised site plan. If the property were destroyed (by fire for example) it would be permitted to reconstruct the structure in its original state as a legal non-conforming use.

ACTIONS TAKEN

Motioned by Hannon, seconded by Lane to approve all three variances in accordance with the Staff recommendation.

Motion failed, 2-4, with Hannon and Lane voting in favor. Goans, Emerson, von Tersch and Carpenter voted in opposition.

Motioned by Carpenter, seconded by Emerson to approve the setback variances for 1140 Mississippi as presented, based on the findings of fact presented in the body of the Staff Report.

Motion carried unanimously, 6-0.

Motioned by Carpenter, seconded by von Tersch to defer the parking variance for two months and to direct Staff to obtain a legal opinion on the following questions:

1. Can the Board legitimately consider adjacent properties held under the same ownership as part of this review? Is this impacted by the fact that the Board has already taken action on one of the properties (1136 Mississippi)?
2. How relevant to this review is the ordinance regarding the number of unrelated persons allowed in a single-family home in the RD zoning district? Can uses be grandfathered in?

Motion carried unanimously, 6-0.

DISCUSSION ON THE ACTION

Hannon stated for the record that the Board must not lose sight of the fact that no parking could be provided for 1140 Mississippi, regardless of regulations and use.

ITEM NO. 4: 1200 EAST 11th STREET [MKM]

B-03-08-06: A request for a variance as provided in Section 20-1709.1 of the Zoning Ordinance of the Code of the City of Lawrence, Kansas, 2003. The request is from the paving standards set forth in Sections 20-1217 and 20-1443(b) of the City Code. The applicant proposes to use gravel within the storage area shown on the site plan rather than paving it to an acceptable paving standard as required by City Code. The request is for the property located at 1200 East 11th Street, which is legally described as Lot 4, Polk Subdivision in the City of Lawrence. Submitted by Cathy Clark with Paul Werner Architects for MG Holdings, L.C., the property owner of record. Deferred from the April 6th meeting.

STAFF PRESENTATION

Ms. Miller introduced the item, a request to allow a gravel paving surface for an exterior storage area. She noted that a site plan had been approved for project and described the industrial character of the surrounding area, pointing out the only residential use in the vicinity - a small home to the southeast.

Ms. Miller noted that the property was located in the floodway fringe, where permeable surfaces were preferable to impervious surfaces. However, Staff was unable to find that paving the subject area would present an unnecessary hardship to the applicant and therefore recommended denial of the variance.

It was discussed that the storage facility to the north currently had a gravel surface, but this would have to be brought up to compliance with current paving standards if significant changes made a site plan necessary.

Ms. Miller said that, if the Board chose to approve the variance, they apply a condition for use of dust retardant measures as outlined in the Staff Report.

It was verified that the request applied only to a section of the overall property, measuring about 2400 square feet in area. It was also established that the railroad right-of-way adjacent to this section was graveled.

APPLICANT PRESENTATION

Greg Polk, applicant, stated that the area uses had gravel surfaces almost exclusively. He noted that an exact duplicate of the requested variance was approved in 2004, but had expired while he dealt with personal medical issues.

PUBLIC COMMENT

No member of the public spoke on this item.

BOARD DISCUSSION

The Board generally agreed that it was appropriate to rely on their previous action, since no part of the request or the situation had changed since the 2004 approval. Emerson warned against repeating actions as a matter of course. The Board also cited the preference for permeable surfaces in flood prone areas such as this.

The Board discussed alternate findings for the hardship criteria that Staff was not able to support in their own analysis. It was suggested that denial would unfairly "change directions" from their previous action, when no part of the request had changed.

ACTION TAKEN

Motioned by Hannon, seconded by Lane to approve the variance to allow gravel surfacing for a section of 1200 E. 11th Street as presented, with the condition that dust retardant measures be applied, based on the findings of fact presented in the body of the Staff Report and the additional finding related to hardship as discussed.

Motion carried unanimously, 6-0.

ITEM NO. 5: APPEAL OF ADMINISTRATIVE ACTION; 1811 WAKARUSA DRIVE

B-05-18-06: Consider an appeal request filed by Jack Gaumnitz, representing JELL, Inc., the property owner of record, of a determination issued by Brian Jimenez, Zoning Enforcement Manager in the Neighborhood Resources Department, City of Lawrence, dated April 21, 2006. The appeal alleges the City has incorrectly made a determination that a street tree planted on the property does not meet the minimum size specifications found in Sections 20-1431 and 20-1432.1 of the Zoning Ordinance of the Code of the City of Lawrence, Kansas, 2003. The subject property is located at 1811 Wakarusa Drive. It is legally described as Lot 1, Oread West No. 14 Subdivision in the City of Lawrence, Douglas County, Kansas.

This item was withdrawn prior to the meeting.

ITEM NO. 6: MISCELLANEOUS

- a) Consider a request for a 90-day extension of the variances granted for the Delaware Street Commons residential co-housing project on the east side of the 1200 block of Delaware Street. [B-01-01-04] The last extension granted by the Board was approved on March 2, 2006.

BOARD DISCUSSION

Goans said he had spoken with Rich Minder about this project. Mr. Minder had indicated that they would close on a loan on June 3rd and hoped to complete the contract signing on June 4th.

ACTION TAKEN

Motioned by von Tersch, seconded by Carpenter to approve a 90-day extension of the variances granted for the Delaware Commons project.

Motion carried unanimously, 6-0.

DISCUSSION ON THE MOTION

It was clarified that, under the new Code, only one extension would be permitted for an approved variance. However, the original approval would be for a longer period (12 months). If an extension was given and allowed to expire, the applicant would have to return with what would be considered a brand new variance request.

- b) Set a date for a review session on the new Code

BOARD DISCUSSION

The Board and Staff established a meeting time to discuss the new Code before it took effect – June 27th at 8:00 a.m., location TBA. Members were asked to forward specific questions to the Chair by June 20th, who would then communicate these questions to Staff to be addressed at the review session.

- c) Receive Text Amendments proposed for consideration at a later date.

Ms. Miller explained the Board had been given a number of text amendments to review before they would be asked to comment. It was expected that several more amendments would be forthcoming.

d) Public Comment

Paul Werner apologized for his part in heated discussion that took place earlier in the evening regarding Item 3. The Board and Mr. Werner agreed that it was ideal to discuss items professionally and not to take comments from either side on a personal level.

ADJOURN – 8:45 p.m.

Official minutes are on file in the Planning Department office.